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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. The purpose of this Act is to help procurement  
2 officers, before awarding a contract, identify contractors that  
3 habitually perform poorly. This will help to ensure that the  
4 public receives a completed project that is delivered on time,  
5 on budget, and of acceptable quality.

6       SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9       "§103D-       Inadequate performance database; contractors.

10      (a) The administrator of the state procurement office shall  
11      develop and administer a searchable electronic database to  
12      record instances of inadequate performance by contractors for  
13      public works contracts under chapter 103 and construction  
14      procurement contracts under this chapter.

15      (b) The administrator of the state procurement office  
16      shall establish criteria for the listing of contractors in the



1 inadequate performance database, which shall include the name  
2 and other relevant information of contractors on projects that:

3 (1) As a result of the contractor:

4 (A) Were over budget;

5 (B) Were not completed as scheduled; or

6 (C) Involved substandard construction; or

7 (2) Involved any other criteria of inadequate performance  
8 of the contract, as determined by the administrator of  
9 the state procurement office.

10 (c) The inadequate performance database shall be  
11 accessible to all procurement officers listed in section  
12 103D-203. The administrator of the state procurement office may  
13 make the inadequate performance database accessible to the  
14 public.

15 (d) At the completion of any construction contract under  
16 this chapter, the procurement officer shall review the project  
17 to determine if the project met any of the criteria in  
18 subsection (b). If the procurement officer determines that any  
19 of the criteria in subsection (b) have been met, the procurement  
20 officer shall audit the contractor's performance of the  
21 contract. The contractor shall have the opportunity to respond



1 to any matter of issue during the audit or before the  
2 procurement officer's final determination. If, after reviewing  
3 the audit and the contractor's response, if any, the contracting  
4 officer determines that any of the criteria in subsection (b)  
5 have been met, the contracting officer shall make a final  
6 determination of inadequate performance. The procurement  
7 officer shall notify the administrator of the state procurement  
8 office of the final determination, and the administrator of the  
9 state procurement office shall enter the contractor and any  
10 other relevant information in the inadequate performance  
11 database.

12 (f) The administrator of the state procurement office  
13 shall establish by rule pursuant to chapter 91:

14 (1) Criteria for the removal of a contractor from the  
15 inadequate performance database, including the length  
16 of time that a contractor may be listed in the  
17 database; and

18 (2) Procedures to appeal any final determination by a  
19 contracting officer to list a contractor in the  
20 inadequate performance database.



1        (g) Before the award of any contract under chapter 103 or  
2 a construction contract under this chapter, the procuring  
3 officer shall consult the inadequate performance database. If a  
4 potential awardee appears in the database, the procuring officer  
5 may decide to either accept or reject the potential awardee  
6 based on the procurement officer's evaluation of the facts  
7 contained in the database and any additional information the  
8 procurement officer may gather, including an interview with the  
9 potential awardee. Any determination to award the contract to  
10 the potential awardee or reject the potential awardee's bid  
11 shall be made in writing and shall include the reasons for  
12 making the determination. A copy of the written determination  
13 shall be sent to the administrator of the state procurement  
14 office and the accepted or rejected awardee."

15        SECTION 3. Section 103D-206, Hawaii Revised Statutes, is  
16 amended to read as follows:

17        **"§103D-206 Additional duties of the administrator of the**  
18 **procurement office.** In addition to the duties referred to in  
19 section 103D-205, the administrator shall:

- 20        (1) Perform periodic review of the procurement practices  
21        of all governmental bodies;



- 1       (2) Assist, advise, and guide governmental bodies in  
2       matters relating to procurement;
- 3       (3) Determine corrective actions; provided that if a  
4       procurement officer under the jurisdiction of the  
5       administrator of the state procurement office or a  
6       chief procurement officer of any of the other state  
7       entities under section 103D-203, fails to comply with  
8       any determination rendered by the administrator within  
9       thirty days from the date of the issuance of the  
10      determination, or longer if permitted by the  
11      administrator upon request by the procurement officer  
12      or a chief procurement officer, the procurement  
13      officer or chief procurement officer shall be subject  
14      to an administrative fine under section 103D-106, for  
15      every day of noncompliance;
- 16      (4) Develop and administer a statewide procurement  
17      orientation and training program;
- 18      (5) Develop, distribute, and maintain a procurement manual  
19      for all state procurement officials; [and]



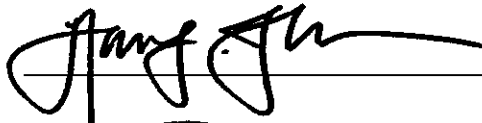

(6) Develop, distribute, and maintain a procurement guide  
for vendors wishing to do business with the State and  
its counties[-]; and

(7) Develop and administer an inadequate performance  
database pursuant to section 103D- ."

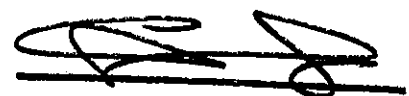
SECTION 4. Statutory material to be repealed is bracketed  
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2015.

INTRODUCED BY:

  
  
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JAN 28 2015



# H.B. NO. 1180

**Report Title:**

Procurement; Inadequate Performance

**Description:**

Requires the state procurement office to establish a database to record inadequate past performance by contractors on public works projects.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

